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Attorneys for Nominal Defendant  
Leap Wireless International, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES GRAHAM, Derivatively on  
Behalf of Nominal Defendant LEAP  
WIRELESS INTERNATIONAL, INC.,

Plaintiff,

v.

S. DOUGLAS HUTCHESON, AMIN  
KHALIFA, GRANT BURTON, DEAN M.  
LUVISA, MICHAEL B. TARGOFF, JOHN  
D. HARKEY, JR., ROBERT V. LAPENTA,  
MARK H. RACHESKY, M.D., and JAMES  
D. DONDERO,

Defendants,

and

LEAP WIRELESS INTERNATIONAL,  
INC.,

Nominal Defendant.

CASE NO. 08-CV-0246 BTM NLS

(Derivative Action)

NOMINAL DEFENDANT LEAP WIRELESS  
INTERNATIONAL, INC.'S  
NOTICE OF RELATED CASES  
**FILED IN STATE COURT**

Judge: The Hon. Barry T. Moskowitz  
Courtroom: 14

1 Pursuant to California Rule of Court 3.300(d), Leap Wireless International, Inc. is  
2 required to file and serve its state court Notice of Related Cases, attached hereto as Exhibit A, in  
3 this related action.

4 Dated: June 19, 2008

Respectfully submitted,

5 LATHAM & WATKINS LLP  
6 Miles N. Ruthberg  
7 Pamela S. Palmer  
8 Kimberly Arouh Hicks  
9 Jake Ryan  
10 Curtis Carll  
11 Daniel K. Greene

12 By s/ Kimberly Arouh Hicks  
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28

**PROOF OF SERVICE**

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West Broadway, Suite 1800, San Diego, CA 92101-3375.

On June 19, 2008, I served the following document described as:

**NOMINAL DEFENDANT LEAP WIRELESS INTERNATIONAL, INC.'S  
NOTICE OF RELATED CASES FILED IN STATE COURT**

by serving a true copy of the above-described document in the following manner:

**BY ELECTRONIC FILING**

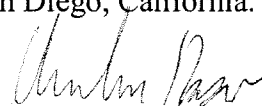
I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following CM/ECF users were served:

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**Attorneys for Individual Defendants**

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 19, 2008, at San Diego, California.

  
\_\_\_\_\_  
Andrea Rasco

# **EXHIBIT A**

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12 Attorneys for Nominal Defendant  
Leap Wireless International, Inc..

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN DIEGO

16 LORI MCBRIDE, Derivatively on Behalf of  
17 Leap Wireless International, Inc.,

18 Plaintiff,

19 v.

19 S. DOUGLAS HUTCHESON, MARK H.  
20 RACHESKY, JAMES D. DONDERO,  
JOHN. D. HARKEY, JR., ROBERT V.  
21 LaPENTA, MICHAEL B. TARGOFF,

22 Defendants,

23 – and –

24 LEAP WIRELESS INTERNATIONAL,  
INC., a California corporation,

25 Nominal Defendant.  
26  
27  
28

Case No. 37-2007-00081584-CU-MC-CTL

**NOMINAL DEFENDANT LEAP WIRELESS  
INTERNATIONAL, INC.'S  
NOTICE OF RELATED CASES**

Judge: Hon. John S. Meyer  
Dept.: 61  
Complaint Filed: November 13, 2007

1 **Notice of Related Cases**

2 Pursuant to California Rules of Court 3.300 (c), Nominal Defendant Leap  
3 Wireless International, Inc. ("Leap") hereby gives notice to the Court and all interested parties  
4 that the above captioned state derivative case is related to: (1) pending federal derivative and  
5 securities cases, and (2) dismissed cases.

6 **A. Related Pending Federal Derivative And Securities Cases**

7 This case, *Lori McBride, Derivatively on Behalf of Leap Wireless International,*  
8 *Inc. v. S. Douglas Hutcheson, Mark H. Rachesky, James D. Dondero, John D. Harkey, Jr.,*  
9 *Robert V. LaPenta, and Michael B. Targoff, and Nominal Defendant Leap Wireless*  
10 *International, Inc.*, filed February 7, 2008 (hereinafter the "***Leap State Derivative Litigation***"),  
11 is related to the following pending federal cases:

12 1. The federal derivative case pending in the United States District Court of  
13 the Southern District of California, before the Honorable Barry T. Moskowitz: *Charles Graham,*  
14 *Derivatively on Behalf of Nominal Defendant Leap Wireless International, Inc. v. S. Douglas*  
15 *Hutcheson, Amin Khalifa, Grant Burton, Dean M. Luvisa, Michael B. Targoff, John D. Harkey,*  
16 *Jr., Robert V. LaPenta, Mark H. Rachesky, M.D., and James D. Dondero and Nominal*  
17 *Defendant Leap Wireless International, Inc.*, Case No. 08cv0246 BTM (NLS), filed February 7,  
18 2008 (hereinafter the "***Leap Federal Derivative Litigation***").

19 2. The consolidated securities class action case pending in the United States  
20 District Court for the Southern District of California, before the Honorable Barry T. Moskowitz:  
21 *HCL Partners Limited Partnership v. Leap Wireless International, Inc., S. Douglas Hutcheson,*  
22 *Dean M. Luvisa, Amin I. Khalifa, and PriceWaterhouseCoopers LLP*, Lead Case No. 07cv2245  
23 BTM (NLS), filed November 27, 2007, and *Kent Carmichael v. Leap Wireless International,*  
24 *Inc., S. Douglas Hutcheson, Mark H. Rachesky, Amin I. Khalifa and Dean M. Luvisa*, Case No.  
25 08cv128 (hereinafter collectively the "***Leap Securities Litigation***").

1           **B.    Related Dismissed Cases**

2                   The *Leap State Derivative Litigation* is also related to the following three  
3 dismissed cases—one state derivative action and two federal securities class actions (collectively  
4 the “**Dismissed Cases**”):

5                   1.       *Charles Graham, Derivatively on Behalf of Nominal Defendant Leap*  
6 *Wireless International, Inc. v. S. Douglas Hutcheson, et al.*, Superior Court of California for the  
7 County of San Diego Case No. 37-2008-00075341-CU-MC-CTL, filed on January 9, 2008 and  
8 subsequently dismissed. Derivative plaintiff Graham refiled his action in this Court on February  
9 7, 2008 and it is the *Leap Derivative Litigation*.

10                  2.       *Frank Charek v. Leap Wireless International, Inc., et al.*, United States  
11 District Court for the Southern District of California, Case No. 07CV2256DMS(CAB), filed  
12 November 28, 2007 and subsequently dismissed.

13                  3.       *Devay Campbell v. Leap Wireless International, Inc., et al.*, United States  
14 District Court for the Southern District of California, Case No. 07CV2297BTM(NLS), filed  
15 December 7, 2007 and subsequently dismissed.

16           **C.    Description Of The Manner In Which The Cases Are Related**

17                   Pursuant to California Rules of Court 3.300 (a), an action or proceeding is related  
18 to another action or proceeding where both of them: (1) involve the same parties and are based  
19 on the same or similar claims; (2) arise from the same or substantially identical transactions,  
20 incidents, or events requiring the determination of the same or substantially identical questions of  
21 law or fact; (3) involve claims against, title to, possession of, or damages to the same property; or  
22 (4) are likely for other reasons to require substantial duplication of judicial resources if heard by  
23 different judges.

24                  1.       The *Leap State Derivative Litigation* is related to the *Leap Federal*  
25 *Derivative Litigation*.

26                   The state and federal derivative litigation meet each of the factors identified above  
27 for related cases. First, they both involve substantially overlapping parties—Leap and several of  
28

1 its current and former officers and directors, including S. Douglas Hutcheson, Mark H.  
 2 Rachesky, James D. Dondero, John D. Harkey, Jr., Robert V. LaPenta, and Michael Targoff.  
 3 Second, they both arise from the same or substantially identical transactions, incidents, or events  
 4 – Leap’s financial restatements for the period 2004 to 2007 that was announced in November  
 5 2007, and allegations of the defendants’ knowledge regarding the accounting errors and alleged  
 6 deficiencies in internal controls in the four years prior to such announcement. Further, both the  
 7 state and federal cases will require the determination of the same or substantially identical  
 8 questions of law or fact, including but not limited to the threshold issue of shareholder standing  
 9 to bring the claims derivatively. Third, both the state and federal derivative action involve the  
 10 same claims, including but not limited to breach of fiduciary duty claims. Fourth, both the state  
 11 and federal derivative action will require substantial duplication of judicial resources if heard by  
 12 different judges.

13 Due to the overlapping nature of the *Leap State Derivative Litigation* and the  
 14 *Leap Federal Derivative Litigation*, Leap will move to stay this state action until the parallel  
 15 federal action is resolved.

16 2. The ***Leap State Derivative Litigation*** is also related to the ***Leap Securities***  
 17 ***Litigation***

18 The *Leap State Derivative Litigation* and the *Leap Securities Litigation* also meet  
 19 each of the factors identified above for related cases. First, they both involve substantially  
 20 overlapping parties—Leap and several of its current and former officers and directors. Second,  
 21 they both arise from the same or substantially identical transactions, incidents, or events –  
 22 including a restatement of Leap’s financial statements for the period 2004 to 2007, as announced  
 23 on November 9, 2007, and the individual defendants’ alleged knowledge of the accounting errors  
 24 underlying such restatements and alleged lack of internal controls. Further, the *Leap State*  
 25 *Derivative Litigation* and the *Leap Securities Litigation* Leap will require the determination of  
 26 the same or substantially identical questions of law or fact, including legal issues pertaining to  
 27 the scope of discovery and factual issues such as whether the alleged errors violate GAAP, when  
 28



1 the defendants became aware of the alleged errors, and whether the defendants traded on  
 2 material adverse information. Third, both the *Leap State Derivative Litigation* and the *Leap*  
 3 *Securities Litigation* are likely to require substantial duplication of judicial resources and risk  
 4 inconsistent rulings if heard by different judges on a variety of issues, including discovery issues,  
 5 factual issues, and issues pertaining to the extent of the automatic discovery stay under the  
 6 Private Securities Litigation Reform Act when, as here, a motion to dismiss a securities claim is  
 7 pending. The Southern District of California has already determined that the *Leap Federal*  
 8 *Derivative Litigation* is related to the *Leap Securities Litigation*, and for the same reasons, this  
 9 Court should similarly find the *Leap State Derivative Litigation* is related to the *Leap Securities*  
 10 *Litigation*.

11 3. The *Leap State Derivative Litigation* is also related to the **Dismissed**  
 12 **Cases**

13 For the reasons discussed above, the *Leap State Derivative Litigation* is also  
 14 related to the dismissed state derivative action and the dismissed federal securities actions.

15  
 16 Dated: June 1, 2008

Respectfully submitted,

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 Pamela S. Palmer  
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 22 Kimberly Arouh Hicks  
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Leap Wireless International, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LORI MCBRIDE, Derivatively on Behalf of  
Leap Wireless International, Inc.,

Plaintiff,

v.

S. DOUGLAS HUTCHESON, MARK H.  
RACHESKY, JAMES D. DONDERO, JOHN  
D. HARKEY, JR., ROBERT V. LaPENTA,  
MICHAEL B. TARGOFF,

Defendants,

– and –

LEAP WIRELESS INTERNATIONAL,  
INC., a California corporation,

Nominal Defendant.

CASE NO. 37-2007-00081584-CU-MC-CTL

**PROOF OF SERVICE OF NOMINAL  
DEFENDANT LEAP WIRELESS  
INTERNATIONAL, INC.'S NOTICE OF  
RELATED CASES**

Judge: Hon. John S. Meyer  
Dept.: 61  
Complaint Filed: November 13, 2007

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West Broadway, Suite 1800, San Diego, California 92101-3375.

On June 19, 2008, I served the following documents described as:

**NOMINAL DEFENDANT LEAP WIRELESS INTERNATIONAL, INC.'S NOTICE OF RELATED CASE**

by serving a true copy of the above-described document in the following manner:

<input type="checkbox"/>	<b><u>By Federal Express.</u></b> I am readily familiar with the office practice of Latham & Watkins for collecting and processing packages for delivery by FedEx, which practice is that when packages are deposited with the Latham & Watkins personnel responsible for depositing packages with FedEx, such packages are picked up by a representative of FedEx that same day in the ordinary course of business.
<input type="checkbox"/>	<b><u>By E-Service.</u></b> I am readily familiar with the office practice of Latham & Watkins for preparing and serving documents by e-mail, which practice is that when documents are to be served by e-mail, they are scanned in a .pdf format and sent to the addressees on that same day in the ordinary course of business.
<input type="checkbox"/>	<b><u>By Facsimile.</u></b> I am readily familiar with the office practice of Latham & Watkins for collecting, processing, and transmitting facsimiles. Under that practice, when a facsimile is deposited with the Latham & Watkins personnel responsible for facsimiles, such facsimile is transmitted that same day in the ordinary course of business.
<input checked="" type="checkbox"/>	<b><u>By U.S. Mail.</u></b> I am readily familiar with the office practice of Latham & Watkins for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins personnel responsible for depositing with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid in a sealed envelope.
<input type="checkbox"/>	<b><u>By Hand Delivery.</u></b> I am readily familiar with the office practice of Latham & Watkins for collecting and processing documents for hand delivery by a messenger service or a registered process server. Under that practice, documents are given to the messenger service or registered process server for the delivery of documents by hand in accordance with the instructions provided to the messenger service or registered process server; such documents are delivered to the messenger service or registered process server on that same day in the ordinary course of business. I caused a sealed envelope or package containing the above-described document(s) and addressed as set forth below in accordance with the office practice of Latham & Watkins for collecting and processing documents for hand delivery by a messenger service or a registered process server.
<input checked="" type="checkbox"/>	<b><u>By Electronic Filing.</u></b> I am readily familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following CM/ECF users were served:

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**(Via Electronic Filing)**

**Attorneys for Individual Defendants**

I will also cause the above referenced document to be filed in the pending related cases.

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **June 19, 2008**, at San Diego, California.

  
 Andrea Rasco